



January 30, 1978
NUMBER 5400.4

1/30/78
694-25-26
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ATSD(LA)

Department of Defense Directive

SUBJECT Provision of Information to Congress

References:

- (a) DoD Directive 5400.4, subject as above, February 20, 1971 (hereby cancelled)
- (b) OMB Circular A-19-R, "Legislative Coordination and Clearance," July 31, 1972
- (c) DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations and Reports, and Comments Thereon," May 21, 1964
- (d) through (h), see enclosure 3

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to incorporate provisions of reference (b) and update DoD policies and procedures governing the furnishing of information, both classified and unclassified, to the Congress. Reference (a) is hereby superseded and cancelled.

B. APPLICABILITY AND SCOPE

1. The provisions of this Directive apply to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to as "DoD Components").

2. Its provisions do not cover the processing of legislation covered by reference (c), nor matters relating to appropriations that fall under the cognizance of the ASD (Comptroller), except as described in D.2.a and D.7.

C. POLICY

It is essential to the proper functioning of the U.S. Government that the Congress receive adequate information concerning all Government programs and operations.

93-26788



This document contains neither recommendations nor conclusions of the Defense Intelligence Agency. It has been reviewed and approved for public release and its distribution is unlimited.

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1. In accordance with the DoD policy of making information concerning its operations and activities available to both Government officials and to the public in general, all DoD Components will:

a. Make maximum information available promptly to, and cooperate fully with, Members of Congress and congressional committees and their staffs.

b. Answer constituents' letters to Members of Congress as fully as possible, subject to the provisions of D.3. and the following limitations:

(1) Classification of official information in the interests of national defense, pursuant to DoD Regulation 5200.1-R (reference (d)); and

(2) Restrictions on official information which, in the best interests of the public as a whole, should not be given general circulation (see DoD Directive 5400.7 (reference (e))).

2. Information not available to the public (C.1.b.) will be made available to the Congress in accordance with D.2.

D. PROCEDURES

1. Furnishing Information to Congress

a. DoD personnel testifying as witnesses before congressional committees, or handling requests from the Congress shall bear in mind the need to protect certain types of information from public disclosure (DoD Regulation 5200.1-R, reference (d) and DoD Directive 5400.7, reference (e)).

(1) If the testimony is to be submitted in writing, it should contain an overall classification to designate the security protection necessary (reference (d)).

(2) If the testimony is to be given orally, the congressional committee concerned shall be advised, in advance, of the security classification and the need for protecting the sensitive portions from public disclosure.

b. Procedures of congressional committees with respect to the preparation and delivery of prepared statements shall be complied with to the extent possible. When a written statement is used by a DoD witness, the statement will be submitted to the committee in advance of the appearance as provided for by the rules of that committee.

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c. After completion of internal coordination and security review, and prior to release outside the Executive Branch, proposed DoD testimony addressing pending legislation or containing specific legislative recommendations will be routinely forwarded to the President's Office of Management and Budget for clearance in accordance with OMB Circular A-19-F (reference (b)). Specific procedures are outlined in enclosure 2.

2. Security

a. To insure military security, testimony concerning classified information requiring security protection shall be given only in closed sessions. Transcripts of such testimony may be released for publication only after they have been reviewed and cleared by the Assistant Secretary of Defense (Public Affairs) (ASD (PA)) or his designee and approved for release by the chairman of the congressional committee which held the hearing.

(1) All such transcripts shall be reviewed for security, proof read, and corrected by the witness prior to being forwarded to the OASD(PA).

(2) Written statements prepared for formal presentation, budget justification books, and other material provided congressional committees, which may be made a part of the published record of congressional hearings, also require review by CASD(PA).

(3) Supplementary, backup, and reference material provided to the committees, which will not be made a part of the published record, or which is prepared for use by witnesses in responding to Members' questions, usually does not require review by OASD(PA).

(4) On request, all DoD Components shall provide prompt and full guidance and assistance to the OASD(PA) in the review of material related to their spheres of responsibility.

(5) Procedures for the security review of congressional testimony are prescribed in enclosure 1.

b. In the rare case where there is a question as to whether particular information may be furnished to a Member or committee of Congress, even in confidence, it will usually be possible to satisfy the request through some alternate means acceptable to both the requester and the Department of Defense. In the event that an alternate reply is not acceptable, there shall be no final refusal to furnish such information to a Member of Congress, except with the express approval of the Head of the DoD Component concerned or the Secretary of Defense. The Assistant to the Secretary of Defense (Legislative Affairs) (ATSD(LA)) shall be

informed of any submissions for such approval to the Head of a DoD Component or to the Secretary of Defense. A final refusal to a committee of the Congress may be made only with the concurrence of the ATSD(LA), who shall be responsible for insuring compliance with all procedural requirements imposed by the President or pursuant to his direction.

3. Information Requested for Constituents. Information requested by Members of Congress for their constituents shall be tested for limitations on dissemination (see C.I.b.) and handled in the same manner as if the constituent himself had written directly to the Department of Defense. If it develops that the information cannot be released, the Member requesting the information shall be advised promptly of that fact and of the reasons for the determination.

4. Congressional Investigations

a. The Assistant to the Secretary of Defense (Legislative Affairs) has been assigned overall responsibility (reference (f)) for assuring compliance with the policies and procedures governing legislative investigations of DoD activities, including liaison with the Congress, and, in this connection, for keeping appropriate DoD personnel currently informed on the status of such investigations (except for those affecting budgets and appropriations, and those related to financial matters).

b. DoD Components shall furnish information copies of all direct written communications to and from the Congress, with respect to such investigations, to the ATSD(LA).

5. Handling of Congressional Requests

a. Replies to all congressional inquiries and requests shall be completely responsive and handled as expeditiously as possible. Should it become evident that a response to a request will be unduly delayed, an interim reply shall be made. The interim reply will indicate the anticipated date of completion and the steps being taken to obtain the information requested.

b. To facilitate prompt and adequate response to congressional requests, it is preferred that the requests be written and specify in detail the particular information or documents desired. However, oral requests which are sufficiently specific to permit prompt and adequate response shall be accepted.

c. A congressional request for correspondence between the Department of Defense and a Member of Congress shall be referred to the concerned Member or committee.

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6. Written Requests Addressed to the Secretary of Defense or Deputy Secretary of Defense. Complete replies to congressional correspondence addressed to the Secretary of Defense or Deputy Secretary of Defense shall be provided within 5 working days of their receipt whenever possible; those of an urgent nature shall be answered more expeditiously, as appropriate.

a. If the information requested is not readily accessible or is of such volume or complexity as to prohibit preparation of a complete reply within the 5-day time limit, the requester shall be advised, via an immediate interim reply, of a date by which the information will be supplied.

b. The Director, Washington Headquarters Services, or his designee for the purpose, shall be provided with the estimated completion date and an adequate explanation of the delay.

7. Public Releases. Replies to congressional inquiries or requests or other transmittals that may result in the release of information with significant public affairs implication will be coordinated in advance with OASD(PA) as required by DoD Directive 5122.5 (reference (g)).

E. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward one copy of implementing documents to the Assistant to the Secretary of Defense (Legislative Affairs) within 60 days.



Deputy Secretary of Defense

Enclosures - 3

1. Procedures for Security Review
of Congressional Testimony
2. Procedures for Securing Administration
Clearance of Congressional Testimony
Addressing Pending Legislation
3. References, continued

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PROCEDURES FOR
SECURITY REVIEW OF CONGRESSIONAL TESTIMONY

A. GENERAL

The following uniform procedures supplement guidance outlined in D.2., basic Directive, governing the review of prepared statements and budget justification material to be presented to congressional committees, transcripts of testimony given in executive session before the committees, and supplemental information prepared for insertion in the hearing record.

B. DEFINITIONS

As used in this Directive, the following definitions apply:

1. Prepared Statement. A statement, including supplemental material, prepared by a DoD witness for presentation to a congressional committee in open or executive session.
2. Executive Session Testimony. Testimony taken in closed congressional hearings, transcripts of which may contain information requiring the protection of a security classification.
3. Inserts. Amplifying and/or supplemental information prepared by the Department of Defense and intended for inclusion in the record of congressional hearings.
4. Budget Justification Books. Material prepared by the Department of Defense at the direction of and in the format prescribed by congressional committees to explain and justify in detail the estimates contained in DoD budgets. This material includes: (1) justification books for each appropriation title (Justification of Estimates for FY); (2) Supporting Data for FY Budget Estimates - Exhibit P-1; (3) Supporting Data for FY Budget Estimates - Descriptive Summaries; (4) Supporting Data for FY Budget Estimates - Major Programs; (5) other material as prescribed for submission by congressional committees prior to commencement of hearings.

C. PROCEDURES

1. Prepared Statements. Prepared statements will be submitted in quadruplicate to the Directorate for Freedom of Information and Security Review, OASD(PA), as far in advance of the required date of transmittal to a congressional committee (or to the President's Office of Management and Budget, if D.1.c., basic Directive, applies) as possible, usually 5 or more working days prior to the date clearance is desired. While there will be cases in which this time limit cannot be met, exceptions must be limited to true emergencies. DD Form 1790 (attachment 1) will be used to forward statements for review. The form will be

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signed by an official authorized by the Secretaries of the Military Departments or the heads of OSD offices and Defense Agencies to certify to the security and policy positions presented.

2. Transcripts. Following testimony by DoD witnesses before a congressional committee in executive session, the committee usually provides appropriate DoD Component offices with a stenographic transcript of the testimony to permit (a) incorporation of necessary editorial corrections, (b) insertion of requested additional information as inserts to the record, and (c) deletion of security information if open publication is contemplated. Such transcripts are generally furnished to the Assistant Secretary of Defense (Comptroller), the Assistant to the Secretary of Defense (Legislative Affairs), the Assistant Secretary of Defense (International Security Affairs) or to the appropriate Military Department, depending on the congressional committee and the organizational affiliation of the witness. Strict time limits are usually imposed for return of the transcripts. Expedited handling of transcripts will be accomplished as follows:

a. Monitoring

(1) The Office of the Assistant Secretary of Defense (Comptroller), the Office of the Assistant to the Secretary of Defense (Legislative Affairs), the Office of the Assistant Secretary of Defense (International Security Affairs), or the office assigned this responsibility by the Secretary of a Military Department, as appropriate, will be responsible for monitoring the status of the transcript during the review process and insuring that suspense dates are met.

(2) The monitoring office will complete and attach DD Form 1587 (attachment 2) to the transcript, determine suspense dates (allotting two-thirds of the available time for editing and preliminary security review and one-third for final action by the Directorate for Freedom of Information and Security Review), and forward the transcript to the parent office of the witness for preliminary review.

b. Editing

(1) Usually, editing by witnesses will involve changes of language or punctuation designed to correct grammatical errors or obvious mistakes in facts or numbers.

(2) Material to be deleted for editorial reasons will be lined out rather than bracketed. (Brackets are reserved for security deletions. See C.2.c., below).

(3) Editing will be entered legibly in ordinary black lead pencil.

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c. Security Review

(1) Information which warrants the protection of a security classification under the provisions of DoD Regulation 5200.1-R (reference (d)) will be marked for deletion by brackets [] with ordinary black lead pencil.

(2) Security deletions must be as specific as possible. For example, classified numbers will be deleted rather than the sentence or paragraph in which they appear.

(3) If an entire passage requires deletion, the brackets will clearly indicate the extent of the deletion. Information marked for deletion from executive session transcripts must reflect a consistent and defensible security position.

(4) Bridging of deletions with substitute unclassified language is not necessary.

d. Final Review and Clearance

(1) Immediately upon completion of editing and preliminary security review, the monitoring office will insure that the transcript, with the related DD Form 1587 (attachment 2), is forwarded to the Directorate for Freedom of Information and Security Review, OASD(PA), for final review and clearance.

(2) The Directorate for Freedom of Information and Security Review will make final security determinations, using red pencil markings, and return the transcript to the submitting office for processing in accordance with the individual requirements of the committee concerned, including any required excision of classified material. Some committees furnish two copies of a transcript, both of which must be returned: one, a printer's copy excised of all classified material; the other, a committee file copy with the classified areas indicated with red pencil brackets. Usually, completed transcripts will be returned to committees through appropriate monitoring offices.

3. Inserts. All information prepared for insertion as a part of the official record of open and executive session testimony will be prepared on DD Form 2136 (attachment 3), given preliminary review as outlined in C.2.c., this enclosure, and submitted to the Directorate for Freedom of Information and Security Review for final review.

a. Whenever possible, inserts will be placed in executive session transcripts before submission to the Directorate for Freedom of Information and Security Review.

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b. When inserts are not submitted with transcripts, two copies will be marked to indicate transcript page location and transmitted by DD Form 1790 (attachment 1), certified as indicated in C.1., this enclosure.

c. Insert material will not be forwarded to a congressional committee without review by the Directorate for Freedom of Information and Security Review.

d. Where required, excising of security material from inserts will be accomplished as prescribed for transcripts in C.2.d. (2), this enclosure, and the lower portion of DD Form 2136 will be removed prior to their delivery to the committee.

4. Budget Justification Books. Budget justification books prepared for submission to congressional committees will be submitted in duplicate to the Directorate for Freedom of Information and Security Review, OASD(PA), as far as possible in advance of the date clearance is desired, but at least 5 working days prior to that date. Information which warrants the protection of a security classification will be bracketed by ordinary black lead pencil as indicated in C.2.c., this enclosure. DD Form 1790 (attachment 1), certified as indicated in C.1., this enclosure, will be used as a transmittal.

5. Designation of "For Official Use Only" Material. Under the provisions of paragraph III.C.3., DoD Directive 5025.9 (reference (h)), the portions of material submitted for review which qualify for the marking "For Official Use Only" must be so designated and accompanied by an explanation of the rationale for the finding in accordance with section VIII, "Exemptions," of DoD Directive 5400.7 (reference (e)). Following review, the office transmitting such material to the Congress will be responsible for providing the recipient with an appropriate explanation as to the significance of the term "For Official Use Only" as specified in DoD Directive 5025.9 (reference (h)).

6. Release of Information. Information presented in hearings may not be released to the public until released by the congressional committee or with permission of the committee. The importance of maintaining the confidence of the Congress in this regard cannot be overemphasized.

Attachments - 3

1. DD Form 1790
2. DD Form 1587
3. DD Form 2136

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(Att 1 to Encl 1)

PREPARED TESTIMONY REVIEW	
TO: DIRECTOR, FREEDOM OF INFORMATION AND SECURITY REVIEW, OASD (PA)	DATE
The attached document is forwarded for review, basic paragraph D.2.a.	
DESCRIPTION OF DOCUMENT (Enter statement, budget justification book, insert(s) or page(s), etc.)	
WITNESS	
COMMITTEE/SUBCOMMITTEE	
HEARING DATE AND SUBJECT	
PAGE COUNT	THIS DOCUMENT IS FOR <input type="checkbox"/> CLASSIFIED <input checked="" type="checkbox"/> UNCLASSIFIED PRESENTAT ON (Check, applicable items)
UPON COMPLETION NOTIFY (Name, agency and telephone number)	
DIRECT QUESTIONS TO (Name, agency and telephone number)	
REQUEST CLEARANCE MLT (Date)	
The attached material has department/agency approval for the purpose specified. Any portions requiring security protection have been appropriately designated.	
ATTACHMENT	SIGNATURE

DD FORM 1790
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(Att 2 to Encl 1)

RECORD OF CONGRESSIONAL TRANSCRIPT REVIEW		
TRANSCRIPT ACTION MONITOR (Name, agency and telephone number)		DATE RECEIVED FROM CONGRESS
TO: (In Two)	DATE ACTION MUST BE COMPLETED	
1. _____	1. _____	
2. _____	2. _____	
3. DIRECTOR, FREEDOM OF INFORMATION AND SECURITY REVIEW, OASD(PA)	3. _____	
DESCRIPTION OF DOCUMENT COMMITTEE/SUBCOMMITTEE	HEARING DATE AND SUBJECT	FAGES THRU HEARING: CLOSED/OPEN
CLASSIFICATION		
<p>The attached transcript of testimony is forwarded for editorial and security review in accordance with DoD Directive 5400.4. To meet committee requirements and allow time for final review by the Directorate for Freedom of Information and Security Review, OASD(PA), your action must be completed as indicated. Each element in the review process must give cooperative consideration to the time requirements of all elements in meeting due out dates. An advance copy of this DD Form has been sent to DFOISR, OASD(PA).</p>		
GUIDELINES		
<p>I. SECURITY</p> <p>A. GENERAL - Review must be accomplished by officials competent to judge the security aspects of the subjects involved and to provide a consistent and defensible security position.</p> <p>B. MARKING</p> <ol style="list-style-type: none">1. Use black lead pencil.2. Inclose with brackets [] information to be deleted.3. Make deletions as limited as possible, considering whether the total context may contain clues to the information deleted. <p>II. EDITORIAL</p> <p>A. GENERAL. Edit to correct inaccuracies.</p> <p>B. MARKING</p> <ol style="list-style-type: none">1. Use black lead pencil.2. Line through all words or figures for which substitute language or figures are entered. Do not use brackets.3. Print or write all entries legibly.4. Use standard proofreaders markings.5. Do not change statements by committee members. Note inaccuracies in the margin.		
REMARKS		
FORWARDING CERTIFICATE		
TO: Director, Freedom of Information and Security Review, OASD(PA)		Date _____
<p>Portions of the attached transcript which require deletion in the interests of national security before publication have been bracketed. This action represents the considered judgment of this department/agency that the information so marked warrants the protection of security classification.</p>		
SIGNATURE	OFFICE	

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REPLACES DD FORM 1587, 1 JAN 71, WHICH IS OBSOLETE.

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(Att 3 to Encl 1)

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ACTION OFFICER/EXTENSION							DATE PREPARED
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PROCEDURES FOR SECURING
ADMINISTRATION CLEARANCE OF CONGRESSIONAL
TESTIMONY ADDRESSING PENDING LEGISLATION

A. SCOPE OF THE CLEARANCE REQUIREMENT UNDER OMB CIRC. A-19

The routine advance clearance requirements of para. 7, OMB Circ. A-19 (reference (b)), extend only to proposed DoD testimony which addresses pending legislation or contains specific legislative recommendations. In the absence of a specific OMB request for submission, clearance is not required for testimony (a) supporting Presidentially approved budget requests; (b) furnished during oversight hearings which do not seek DoD positions on specific legislation; or (c) expressing official views on pending legislation in a manner consistent with a formal DoD report on such legislation previously cleared by OMB during the same Congress.

B. RESPONSIBILITY

1. The Assistant to the Secretary of Defense for Legislative Affairs (ATSD(LA)) will determine, upon approval of a request to furnish DoD testimony, and in consultation with the General Counsel, DoD, whether the requested testimony falls within the advance clearance requirements of OMB Circ. A-19, para. 7. Such determination will be conveyed to the DoD office or agency having primary responsibility for the particular hearing, and that office will be responsible for securing any required OMB clearance and complying with OMB Circ. A-19. Testimony will be furnished to OMB through the Director, Legislative Reference Service, Office of the General Counsel, DoD.

2. Whenever possible, proposed testimony shall be submitted to OMB at least 1 week, and in no event less than 3 full working days, before it is due in the Congress. When short notice requirements render formal requests for clearance impractical, the DoD agency or office responsible for the hearing shall secure OMB advice, through the Director, Legislative Reference Service, in accordance with para. 7(g), OMB Circ. A-19.

C. PROCEDURE

1. Six copies of each proposed written statement to be cleared in accordance with OMB Circ. A-19 will be transmitted to OMB, through the Director, Legislative Reference Service, with a short statement of the anticipated date and time of the hearing and a request for expeditious clearance. A copy of the transmittal letter and proposed statement will simultaneously be furnished ATSD(LA).

2. Immediately after the hearing, the responsible DoD agency or office will furnish OMB a copy of each previously cleared written statement in the form in which it was submitted to the committee or subcommittee concerned.

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REFERENCES, CONTINUED

- (d) DoD Regulation 5200.1-R, "Information Security Program Regulation," November 15, 1973
- (e) DoD Directive 5400.7, "Availability to the Public of Department of Defense Information," February 14, 1975
- (f) DoD Directive 5142.1, "Assistant to the Secretary of Defense (Legislative Affairs)," May 13, 1977
- (g) DoD Directive 5122.5, "Assistant Secretary of Defense (Public Affairs)," July 10, 1961
- (h) DoD Directive 5025.9, "Control and Protection of 'For Official Use Only' Information," February 1, 1968